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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Establishment of a Class A)
Television Service)
)

MM Docket No. 00-10
MM Docket No. 99-292
RM-9260

To: The Commission

COMMENTS OF NORTH ROCKY MOUNTAIN TELEVISION, L.L.C.

North Rocky Mountain Television, L.L.C., licensee of KESI-LP and KEXI-LP Kalispell, Montana; K69HY and K61GW Missoula, Montana; K32EP Bozeman, Montana; K43FK and K58FR Twin Falls, Idaho; K66EV Boise, Idaho and K59GN Rexburg, Idaho, and its related entities¹ (collectively, "North Rocky"), by counsel and pursuant to Section 1.415 of the Commission's Rules, hereby submits Comments in response to the Commission's *Order and Notice of Proposed Rule Making* ("NPRM"), MM Docket Nos. 00-10 and 99-292, FCC 00-16, released January 13, 2000.

Introduction

North Rocky understands the unique role low power television broadcasters play in responding to the programming needs of the communities in which they operate. In fact, an

¹ North Rocky's related entities (through common management) include Bozeman Media Group, licensee of K49FG, K50FN and K64FS Bozeman, Montana; Duluth TV Partners, licensee of KDUL-LP Duluth, Minnesota; Duluth Datacasting, licensee of K56FH Duluth, Minnesota; Reno TV Partners, licensee of KRRI-LP Reno, Nevada; and Pocatello Media Group, proposed assignee of K24EV Pocatello, Idaho (File No. BAPTTL-19991130ABD).

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unwavering commitment to the hallmark principals of our country's broadcast industry – diversity and localism – which in this era of rapid media consolidation are often lost upon full power broadcasters, is the touchstone of North Rocky's business model.

However, in order to fulfil these objectives and develop LPTV stations that will be able to compete in the marketplace and provide high-quality local and diverse programming, LPTV operators such as North Rocky need the assurance that their substantial investments in their LPTV properties will be protected without the risk of imminent displacement. Indeed, as the Commission recognized, Class A status will enable low power broadcasters to obtain financing and engage in the long-term planning necessary to support the continuation of LPTV service.² Accordingly, North Rocky respectfully requests that the Commission adopt the proposals set forth below, to ensure the success of the LPTV industry.

Discussion

1. The Commission Should Allow An Ongoing Window For LPTV Permittees and Licensees To Become Eligible And Apply For Class A Licensees

Rather than limit the class of LPTV licensees who are eligible for Class A status to those who for 90 days prior to the enactment of the Community Broadcasters Protection Act of 1999 ("CBPA") complied with the eligibility requirements contained therein, the Commission should adopt an ongoing window following the adoption of Class A rules in this proceeding to permit LPTV licensees and permittees to comply with the CBPA's eligibility requirements and obtain

² *Notice of Proposed Rule Making, In the Matter of Establishment of Class A Television Service*, MM Docket No. 99-292, RM-9260, FCC 99-257 ¶1 (*rel.* September 29, 1999) (*Class A Rule Making*).

Class A licenses.³ In launching its inquiry and Rule Making proceeding on Class A LPTV service, the Commission recognized that it was establishing a process by which current and even future LPTV licensees would evolve into Class A LPTV broadcasters with protected status. In fact, in addressing the opportunity period to apply for Class A status, the Commission recognized that it might be "unduly restrictive to limit the opportunity to convert to Class A status to only those stations that could qualify in the twelve-month period following conclusion of this proceeding."⁴ The Commission even proposed that future LPTV licensees who were awarded LPTV licenses through the auction process should be eligible for Class A status.⁵

Indeed, the CBPA explicitly permits the Commission to continue to accept applications to convert to Class A status in the future. Specifically, in setting forth its Class A eligibility criteria, Section (f)(2)(B) of the CBPA gives the Commission discretion to grant Class A status "for other reasons determined by the Commission" if it determines that the public interest, convenience and necessity would be served.⁶

³ Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I, *codified at* 47 U.S.C. §336(f). The CBPA's Class A eligibility requirements are: for a period of 90 days prior to the enactment of the CBPA, the station (1) broadcast 18 hours per-day; (2) originated three hours per week of programming produced in the station's market area; and (3) complied with the LPTV rules.

⁴ *Class A Rule Making* at ¶46. The twelve month "window" was proposed by the Community Broadcasters Association in its petition for rule making proceeding that spurred the Commission's *Class A Rule Making*, *See Public Notice* (No. 82996), "Petition for Rule Making Filed for Class A TV Service" (RM-9260) April 21, 1998.

⁵ *Class A Rule Making* at ¶46.

⁶ 47 U.S.C. §336(f)(2)(B).

North Rocky submits that the public interest would be served if the Commission were to create an ongoing process through which licensees and permittees would be eligible to obtain Class A status. Limiting the class of eligible licensees to those who complied with the CBPA for 90 days prior to its enactment is unduly restrictive given the requirement that Class A applicants protect existing services. Moreover, adopting such a narrow window of opportunity for Class A status would unnecessarily preclude many deserving broadcasters like North Rocky from obtaining Class A status who are committed to providing high-quality local programming to their communities. Nevertheless, the Commission should limit future eligibility for Class A status to only those licensees and permittees who come into compliance with the CBPA's eligibility requirements within 90 days prior to filing for a Class A license. This would ensure that Class A LPTV licenses fall into the hands of those LPTV broadcasters who truly promote diversity in the broadcast marketplace.

2. The Commission Should Not Impose On Class A LPTV Licensees The Station Staffing Requirements Applicable To Full Power Broadcasters

The CBPA provides that beginning on the date of its application for a Class A license and thereafter, a station must be in compliance with the Commission's operating rules for full-power stations. The Commission indicated that it would exempt Class A licensees from Part 73 rules "that clearly cannot apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons."⁷ One rule applicable to full power TV service that

⁷ *NPRM* at ¶20.

should not apply to Class A LPTV licensees is the staffing component of the Main Studio rule.⁸

The Commission historically has interpreted its broadcast Main Studio rule to require, among other things, licensees to maintain a "meaningful management and staff presence" at the station's main studio. Specifically, the Commission generally requires licensees to employ full-time managerial and full-time staff personnel who must be present at the station during normal business hours, *i.e.*, Monday through Friday between 8:00 a.m. and 6:00 p.m.⁹ This requirement obviously would impose a significant burden on the already limited resources of LPTV licensees. The Commission should therefore not impose this meaningful management and staff presence requirement on Class A LPTV licensees, so long as a licensee's main studio has program origination capability, a remote control point for the station's transmitter, and personnel who are on-call during normal business hours, regardless of their physical location.

3. The Commission Should Not Impose The Full Power TV Duopoly Rule To Class A LPTV Service.

The Commission should not impose multiple ownership rules applicable to full power TV service to Class A LPTV stations. Specifically, the current multiple ownership rules limit the number of full power TV stations a single entity may own to either one or two stations per DMA. A single entity may own two stations in a DMA only where there remain eight independently-

⁸ 47 C.F.R. §1125.

⁹ See, *e.g.* *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), *recon. granted in part and clarified*, 7 FCC Rcd 6800 (1992).

owned TV stations in the DMA and at least one of those stations is not ranked among the top four stations in the DMA.¹⁰

While ownership restrictions may be justified in the context of full power TV service given the Commission's longstanding concern with diversity, the same reasoning does not apply to Class A LPTV service. As the Commission recognized, "LPTV service has significantly increased diversity of broadcast station ownership."¹¹ Moreover, the efficiency of scale created by multiple ownership of LPTV stations, particularly with regard to the costs of administration, engineering and program production, is crucial in order for the LPTV industry to succeed. Accordingly, the Commission should permit a single entity that meets the definition of a "Small Business" to own up to four Class A LPTV stations in a market.

4. The Commission Should Adopt A More Liberal Definition Of Minor Changes For LPTV Stations

Under the current LPTV rules, any change to an LPTV station that proposes to extend a station's protected signal contour in any direction would constitute a "major" change.¹² As such, LPTV licensees must await a filing window, and possibly be subject to auction, in order to be permitted to file an application proposing such a modification. As the Commission recognized, the standard for what constitutes a major change for LPTV stations is overly restrictive and out

¹⁰ 47 C.F.R. §73.3555(b).

¹¹ *NPRM* at ¶4.

¹² 47 C.F.R. 73.

of step with other services.¹³ For example, most changes to analog television stations are classified as minor changes with the exception of community of license and frequency changes. This disparate treatment with regard to facilities modifications seriously hinders LPTV stations from implementing needed changes such as power increases and antenna site relocations.

Accordingly, the Commission should process as "minor" changes any proposal for increased power, antenna relocation, etc., outside of a filing window and auction procedures, provided the proposals meet all LPTV interference protection requirements adopted by the Commission.

5. The Commission Should Adopt A Presumption of Displacement For LPTV Stations Operating On Channels 52-59

The CBPA prohibits the Commission from granting a Class A license to an LPTV station operating on channels 52-69 which is considered to be "non-core" spectrum.¹⁴ Those licensees that are operating on these channels who are otherwise eligible for Class A status will only be granted a Class A license once they have relocated to suitable "core" spectrum. The problem is that unlike LPTV stations operating on channels 60-69 which enjoy a "presumption of displacement," *i.e.*, they may seek replacement channels at any time without further qualification, LPTV Stations operating on channels 52-59 may seek displacement relief only where there is an actual or predicted interference conflict. This limitation could adversely affect stations operating

¹³ *NPRM* at ¶44.

¹⁴ 47 U.S.C. §336(f)(6)(A).

on channels 52-59 who face displacement at the end of the DTV transition but who nonetheless may not be permitted to relocate without being subject to the Commission's auction procedures.

Accordingly, the presumption of displacement currently applicable to LPTV stations operating on channels 60-69 should be extended to LPTV stations operating on channels 52-59, giving these operators an immediate opportunity to seek replacement channels while such channels might still be available. Extending the presumption of displacement to all non-core LPTV broadcasters would enable LPTV licensees to find a permanent home for their stations thereby removing the specter of future displacement. Absent such certainty, LPTV stations operating on channels 52-59 would be unable to obtain the necessary financing to operate their stations in a manner that serves the public interest and provide quality local programming that addresses the needs of their communities.

6. The Commission Should Permit Class A Facilities Changes That Protect Actual Signal Contours of Full Power Stations

The Commission seeks comment on whether Class A LPTV Stations that seek to implement facilities changes, such as substantial power increases, should be required to protect the maximum facilities of full service stations allowed by the NTSC operating rules.¹⁵ North Rocky strongly opposes this proposal since the CBPA explicitly requires that a modification to a Class A station protect only the Grade B contour of an existing full power television station as that contour existed on November 29, 1999, i.e., the date of enactment of the CBPA.¹⁶ Thus, contrary

¹⁵ *NPRM* at ¶46.

¹⁶ 47 U.S.C. §336(f)(7)(A)(i).

to the Commission's proposal, Class A stations should not be required to protect the maximum facilities of full service stations.

7. The Commission Should Permit Class A LPTV Stations To Operate At Certain Higher ERP Levels Than Currently Permitted Under the LPTV Rules.

The Commission should permit Class A stations to operate at the higher power levels applicable to full power TV service, subject to the interference protection requirements for Class A applications, *i.e.*, the application must protect existing NTSC, DTV, LPTV and TV translator stations. Not only is such a proposal consistent with the CBPA which explicitly imposes Part 73 full power rules on Class A licensees, but also, such technical parity between full power and Class A television stations is fundamentally fair in light of the fact that both services will be governed by the same regulatory structure. At the very least, the Commission should leave the door open for such power increases for Class A LPTV stations and reexamine the issue at such time as it gains a fuller understanding of the coverage and interference requirements of full service digital television stations.

Conclusion

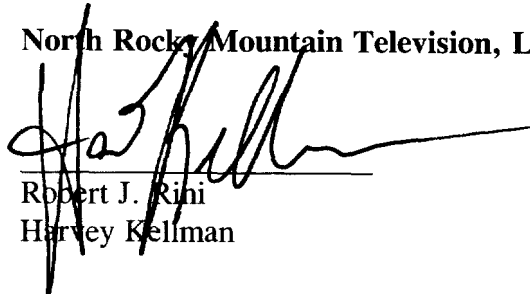
In sum, granting Class A status to those LPTV licensees and permittees who are committed to furthering the Commission's longstanding principles of diversity and localism would remove the vexing cloud of future displacement and enable such broadcasters to obtain the necessary financing to construct and operate their stations in a manner that serves the public interest. For

these reasons, North Rocky respectfully requests that the Commission adopt the proposals for Class A service as set forth herein.

Respectfully submitted,

North Rocky Mountain Television, L.L.C.

By:

A handwritten signature in black ink, appearing to read "Rini", is written over a horizontal line.

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